REMARKS

This Application has been carefully reviewed in light of the Office Action mailed March 23, 2006 (the "Office Action"). Claims 1-45 are pending in the application. Claims 1-45 stand rejected. Applicants amend Claims 4-6, 8-11, 13-20, 28-29, 31, 33-39, 40, 42-43 and 45. Applicants respectfully request reconsideration and favorable action in this case in view of the following remarks.

Amendments to the Specification

The Office Action contends that the title of the invention is not descriptive and suggests renaming the invention "Allocating Reserved Bandwidth to High Priority Conference Request Based on Predetermined Priority Scheme." Applicants respectfully submit that the amended title, "System and Method for Reserving Conference Resources for a Multipoint Conference Using a Priority Scheme," is indicative of the invention.

The Office Action also requests that Applicants update the section entitled "Cross Reference to Related Applications." Applicants amend this section of the specification pursuant to the request of the Office Action.

Non-Statutory Double Patenting Rejection

Claims 1-45 of the present application stand provisionally rejected on the ground of nonstatutory double patenting over Claims 5-11, 14-16, 18-21, 25-26, 29-31, 36-40 of copending Application No. 09/902,946 ("the '946 Application"). Since the mailing of this Office Action, the '946 Application has been granted as U.S. Patent No. 7,035, 230.

The Office Action provides that a timely filed terminal disclaimer in compliance with 37 C.F.R. 1.321(c) may be used to overcome this rejection. Applicants have included such a terminal disclaimer with this response (See Exhibit A). Applicants respectfully contend that this terminal disclaimer is sufficient to overcome the provisional rejection of the present

application on the grounds of non-statutory double patenting over Claims 5-11, 14-16, 18-21, 25-26, 29-31 and 36-40 of the '946 Application.

Claims 1-45 of the present application also stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-30 of U.S. Patent No. 6,961,323, issued to Xu et al *("Xu")*. Applicants respectfully traverse for the reasons set forth below.

A nonstatutory obviousness-type double patenting rejection is only proper when a claim in the application defines an invention that is merely an obvious variation of an invention claimed in a patent. *See* MPEP § 804. To properly reject Claims 1-45 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1-30 of *Xu*, the Office Action should make clear the differences between the inventions defined by the conflicting claims, and the reasons why a person of ordinary skill in the art would conclude that the invention defined in the claims at issue would have been an obvious variation of the invention defined in a claim in the patent. *See id.* This analysis requires a comparison of each rejected claim in the application with a claim in the patent. *See id.*

The Office Action acknowledges that the *Xu* claims are not identical to the claims at issue, but states that they are not patentably distinct from each other. It further contends that the *Xu* patent teaches all the limitations as disclosed such that the interpretation of operating a contention-based multiple access communication system comprising usage of a shared communication resource for reservation at a future appointed time and reserving at least a portion of shared communication resource at a call duration is similar to reserving conference resources for a multipoint conference at approximately a scheduled start time and for a duration of the multipoint conference. As an initial matter, Applicants respectfully point out that a double patenting rejection does not focus on what *Xu* "teaches," but rather what *Xu* claims. Moreover, similarity is not the test to determine whether conflicting claims are patentably distinct, and the Office Action fails to compare each of the limitations of each of the rejected claims to the *Xu* claims. Had there been such a comparison, it would show that

Claims 1-45 of the present application are not merely obvious variations of Claims 1-30 of the *Xu* patent.

Claim 1 is directed to a method for reserving conference resources for a multipoint conference. The method further comprises receiving a request for a multipoint conference reservation and a list of participants. Communication paths for a plurality of the participants are predicted, and resource requirements for a multipoint control unit are estimated. A first multipoint control unit is selected to host the multipoint conference, and the availability of the multipoint control unit resource requirement at approximately a scheduled start time and for a duration of the multipoint conference is determined. If the first multipoint control unit does not have the multipoint control unit resource requirement available at the scheduled start time, a second multipoint control unit is selected to host the multipoint conference. These limitations are not obvious variations of, and are therefore patentably distinguishable from, Claims 1-30 of *Xu*. For example, at a minimum, claims 1-30 of *Xu* do not include predicting communication paths for a plurality of participants.

Claims 13, 26, 29, 33, 36, 40 and 43 are each independent claims that include a limitation generally directed to predicting communication paths for a plurality of participants, and Claims 2-12, 14-25, 27-28, 30-32, 34-35, 37-39, 41-42 and 44-45 each depend, either directly or indirectly, from Claims 1, 13, 26, 29, 33, 36, 40 and 43, respectively. Accordingly, Claims 1-45 are each patentably distinguishable from Claims 1-30 of *Xu*.

For at least these reasons, Applicants respectfully request the Examiner to withdraw the double patenting rejection of Claims 1-45. To the extent that the Examiner intends to maintain the obviousness-type double patenting rejection of Claims 1-45 over *Xu*, Applicants respectfully request that the Examiner provide a comparison of each rejected claim in the application with a claim in *Xu*, in accordance with MPEP § 804, 37 C.F.R. 1.104 (c)(2) and 35 U.S.C. § 132.

Claim Objections

Claims 8 -10 and 18 were objected to because of informalities. Applicants have made the corrections required by the Office Action.

Section 101 Rejections

Claims 33-39 are rejected under 35 USC §101 as directed to non-statutory subject matter. Applicants respectfully traverse these rejections.

The Office Action contends that Claims 33-39 are directed to software *per se* "that is not tangibly embodied on a computer readable medium and therefore lacks a practical application because it alone cannot produce its intended result." Office Action (p. 5, ¶ 7). Applicants amend these claims to further clarify that they are directed to "logic encoded in computer readable media." Such amendments are not considered narrowing or necessary for patentability. Although Applicants believe the Office Action has improperly characterized Claims 33-39 as being directed to "software *per se*," Applicants note that the United States Court of Appeals for the Federal Circuit has recently held that software code alone qualifies, without question, as patentable subject matter under 35 U.S.C. § 101. S*ee Eolas Tech. Inc. v. Microsoft Corp.*, 399 F.3d 1325, 1339 (Fed. Cir. 2005). Accordingly, Applicants respectfully request that the section 101 rejections of Claims 33-39 be withdrawn.

Section 112 Rejections

The Office Action rejects Claims 33-39 under 35 U.S.C. § 112, first paragraph. Applicants respectfully traverse these rejections for the reasons stated below.

The Office Action contends that "[t]he specification does not contain subject matter to implement limitations of claims 33-39 without using hardware." Office Action (p. 5, ¶ 9). As stated above, applicants amend Claims 33-39 to further clarify that they are directed to "logic encoded in computer readable media." Additionally, Applicants comply with 35 U.S.C. § 112 when their specification enables a person skilled in the art to make and use the claimed invention without undue experimentation. M.P.E.P. § 2106(V)(B)(2). "If elements

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of an invention are well known in the art, the applicant does not have to provide a disclosure that describes those elements. In such a case the elements will be construed as encompassing any and every art-recognized hardware or combination of hardware and software technique for implementing the defined requisite functionalities." M.P.E.P. § 2106(II)(C). Moreover, the Federal Circuit has recognized that software and hardware are practically interchangeable in the field of computer technology. S*ee Eolas Tech. Inc.*, 399 F.3d at 1339. Applicants have properly disclosed the invention of claims 33-39 whether or not they have specifically identified every hardware and/or software combination that may be used to implement the limitations of claims 33-39. In any event, the specification describes numerous hardware devices that may be used to implement the limitations of such claims. Accordingly, Applicants respectfully request that the section 112 rejections of Claims 33-39 be withdrawn.

The Office Action rejects Claims 1, 5, 6, 8, 11, 13-18 under 35 U.S.C. § 112, second paragraph. Applicants amend Claims 4-6, 8-11, 13-20, 28-29, 31, 35-36, 38, 40, 42-43 and 45 and respectfully contend that each amended claim particularly points out and distinctly claims the subject matter that Applicants regard as the invention. However, Applicants respectfully traverse the rejection of Claim 1 for the reasons stated below.

The Office Action contends that because multiple references to a "multipoint conference" exist in Claim 1, it is not clear which "multipoint conference" is referred by the limitations "the multipoint conference." The Examiner may have misread Claim 1. The reference to "a multipoint conference" in line 3 of claim one is actually a reference to "a multipoint conference reservation." Accordingly, each instance of "the multipoint conference" properly refers to "a multipoint conference" in lines 1 and 2 of Claim 1. Therefore, Applicants contend that Claim 1 particularly points out and distinctly claims the invention. Applicants respectfully request that the rejections of Claim 1 be withdrawn.

Section 103 Rejections

The Office Action rejects Claims 1, 3, 4 and 7 under 35 U.S.C. §103(a) as being unpatentable over Savage III, et al. US 2001/0009014, Lipstream (*"Savage-Lipstream"*) in

view of Rottoo, U.S. Patent No. 5,933,417, General-DataComm *("Rottoo-General-DataComm")*. At the outset, Applicants respectfully submit that the Office Action misinterprets the teaching of *Savage-Lipstream* and therefore respectfully traverse these rejections for the reasons stated below.

Claim 1 is directed to a method for reserving conference resources for a multipoint conference. The method further comprises receiving a request for a multipoint conference reservation and a list of participants. Communication paths for a plurality of the participants are predicted, and resource requirements for a multipoint control unit are estimated. A first multipoint control unit is selected to host the multipoint conference, and the availability of the multipoint control unit resource requirement at approximately a scheduled start time and for a duration of the multipoint conference is determined. If the first multipoint control unit does not have the multipoint control unit resource requirement available at the scheduled start time, a second multipoint control unit is selected to host the multipoint conference.

The Office Action rejects Claim 1 and contends that *Savage-Lipstream* discloses "predicting communication paths for a plurality of the participants." *See* Office Action (p. 7, ¶ 13). However, *Savage-Lipstream* does not disclose this limitation. Rather, *Savage-Lipstream* discloses a server that "dynamically provides virtual connections among the plurality of clients for transmission of data and thereby facilitates a conference including the plurality of clients." *Savage-Lipstream* (¶ 19). The virtual connections disclosed in *Savage-Lipstream* actually facilitate the conference; they have nothing to do with predicting communication paths for a plurality of participants. *See id.*

The Office Action also contends that *Savage-Lipstream* discloses estimating a multipoint control unit resource requirement. *See* Office Action (p.7, ¶ 13) Applicants respectfully disagree. *Savage-Lipstream* merely determines whether the requested conference is currently being facilitated on any of a plurality of media servers. *See Savage-Lipstream* (Paragraph 20). Determining whether a conference is being held on a server does not disclose, teach or suggest estimating a multipoint control unit resource requirement.

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For at least these reasons, Applicants respectfully contend that the Office Action mischaracterizes the teaching of *Savage-Lipstream*, and *Rottoo-General-DataComm* does not cure this deficiency. Accordingly, the combination of *Savage-Lipstream* and *Rottoo-General-DataComm* does not disclose, teach or suggest each of the limitations of Claim 1. Applicants respectfully request that the rejections of Claim 1 be withdrawn.

Claims 3, 4 and 7 each depend from Claim 1 and incorporate all the limitations thereof. Therefore, Claims 3, 4 and 7 are each patentably distinguishable from the combination of *Savage-Lipstream* and *Rottoo-General-DataComm* for at least the same reasons as discussed above with regard to Claim 1.

Claims 2 and 6 are rejected under 35 USC §103(a), as being unpatentable over *Savage-Lipstream* and *Rottoo-General-DataComm* in view of U.S. Patent No. 6,411,601, issued to Shaffer, et al. *("Shaffer-Siemens")*. Claim 5 is rejected under 35 USC §103(a), as being unpatentable over *Savage-Lipstream* and *Rottoo-General-DataComm* in view of "Official Notice". Claims 8-11, 13, 14, 17-20 are rejected under 35 USC §103(a), as being unpatentable over *Savage-Lipstream* and *Rottoo-General-DataComm* in view of Kujoory et al., U.S. Patent No. 6,021,263, Lucent Technologies *("Kujoory-Lucent")*. Applicants respectfully traverse each of these rejections.

Claims 2, 5-6 and 8-11 each depend, either directly or indirectly, from Claim 1 and incorporate all the limitations thereof. The rejection of these claims each depend on the Office Action's mischaracterization of *Savage-Lipstream*, as discussed above, and neither *Rottoo-General-DataComm, Shaffer-Siemens, Kujoory-Lucent*, nor the Official Notice taken by the Examiner cures this deficiency. Moreover, Applicants respectfully traverse the Official Notice taken by the Examiner and disagree with the Office Action regarding the alleged notoriety of the elements to which the Office Action refers in rejecting Claim 5. Accordingly, Claims 2, 5-6 and 8-11 are each patentably distinguishable from the

combinations cited by the Office Action for at least the same reasons discussed above with regard to Claim 1.

Claim 13 is directed to a method for reserving network resources for a multipoint conference reservation. The method further comprises receiving a request for a multipoint conference and a list of participants. A multipoint control unit is selected to host the multipoint conference, and communications paths associated with a plurality of the participants are predicted. Corresponding network resource requirements associated with a plurality of the communication paths are estimated, and a first communication path of the plurality of communication paths is selected. The availability of the estimated network resource requirement associated with the first communication path at approximately a scheduled start time and for an estimated duration of the multipoint conference reservation is determined. If the first communication path does not include the estimated network resource requirement at approximately the scheduled start time and for the estimated duration, a second multipoint control unit is selected to host the multipoint conference.

The Office Action contends that each of the limitations of Claim 13 is disclosed by *Savage-Lipstream* and *Rottoo-General-DataComm* in view of *Kujoory-Lucent*. As stated above, the Office Action mischaracterizes *Savage-Lipstream*. *Savage-Lipstream* does not disclose, teach or suggest predicting communication paths and estimating network resource requirements. Moreover, *Savage-Lipstream* also does not disclose, teach, or suggest selecting a second multipoint control unit to host the multipoint conference if the first communication path does not include the estimated network resource requirement at approximately the scheduled start time and for the estimated duration. While *Savage-Lipstream* may disclose the usage of a plurality of media servers and a determination of whether any one of such servers is active, *see Savage-Lipstream* (¶ 40), it is a further mischaracterization of this reference to assert that it discloses, teaches or suggests the limitation of Claim 13 whereby the second multipoint control unit is selected if the first communication path does not include the estimated network resource requirement at approximately the scheduled start time and for the estimated duration.

For at least these reasons, Applicants respectfully contend that the Office Action mischaracterizes the teaching of *Savage-Lipstream,* and *Rottoo-General-DataComm* and *Kujoory-Lucent* do not cure this deficiency. Accordingly, the combination of *Savage-Lipstream, Rottoo-General-DataComm* and *Kujoory-Lucent* does not disclose, teach or suggest each of the limitations of Claim 13. Applicants respectfully request that the rejections of Claim 13 be withdrawn.

Claims 14 and 17-20 depend, directly or indirectly, from Claim 13 and incorporate all of the limitations thereof. Therefore, Claims 14 and 17-20 are patentably distinguishable from the combination of *Savage-Lipstream* and *Rottoo-General-DataComm* in view of *Kujoory-Lucent* for at least the same reasons as discussed above with regard to Claim 13.

Claims 16, 26-31, 33-38, 40-45 are rejected under 35 USC §103(a), as being unpatentable over *Savage-Lipstream, Rottoo-General-DataComm* and *Kujoory-Lucent* in view of *Shaffer-Siemens.* Claim 15 is rejected under 35 USC §103(a), as being unpatentable over *Savage-Lipstream, Rottoo-General-DataComm* and *Kujoory-Lucent* in view of "Official Notice". Claim 12 is rejected under 35 USC §103(a), as being unpatentable over *Savage-Lipstream* and *Rottoo-General-DataComm* in view of Li, et al., U.S. Patent No. 6,728,365, Nortel Networks.*("Li-Nortel").* Claim 21 is rejected under 35 USC §103(a), as being unpatentable over *Savage-Lipstream, Rottoo-General-DataComm* and *Kujoory-Lucent* in view of *Li-Nortel.* Claims 22-25 are rejected under 35 USC §103(a), as being unpatentable over *Savage-Lipstream, Rottoo-General-DataComm* and *Kujoory-Lucent* in view of "Official Notice". Claims 32 and 39 are rejected under 35 USC §103(a), as being unpatentable over *Savage-Lipstream, Rottoo-General-DataComm* and *Kujoory-Lucent* and *Shaffer-Siemens* in view of "Official Notice". Applicants respectfully traverse each of these rejections.

Claim 26 is directed to an apparatus for reserving conference resources for a multipoint conference. The apparatus comprises a server operable to receive a request for a multipoint conference reservation and a list of participants. The server is further operable to:

predict communication paths for a plurality of the participants; estimate a digital signal processor resource requirement for the multipoint conference; select a first multipoint control unit to host the multipoint conference; determine availability of the digital signal processor resource requirement at approximately a scheduled start time and for an estimated duration of the multipoint conference; and select a second multipoint control unit to host the multipoint conference, if the first multipoint control unit does not have the digital signal processor resource requirement available at the scheduled start time and for the estimated duration.

The Office Action contends that each of the limitations of claim 26 is disclosed by *Savage-Lipstream*, *Rottoo-General-DataComm*, *Kujoory Lucent* and *Shaffer-Siemens*. As stated above, the Office Action mischaracterizes *Savage-Lipstream* as disclosing predicting communication paths for a plurality of participants. Moreover, the combination of *Savage-Lipstream* and *Shaffer-Siemens* fails to teach estimating a digital signal processor requirement because *Savage-Lipstream* merely determines whether the requested conference is currently being facilitated on any of a plurality of media servers. *See Savage-Lipstream* (¶ 20). The addition of *Shaffer-Siemens* does not combine with *Savage-Lipstream* to disclose, teach, or suggest, a server operable to estimate a digital signal processor resource requirement for the multipoint conference.

Claim 12 directly depends from Claim 1 and incorporates all of the limitations thereof. Claims 27-28 depend from claim 26 and incorporates all the limitations thereof. Claims 33 and 40 and their respective dependent Claims 34-35 and 41-42 each include limitations generally directed to predicting communication paths for a plurality of participants and estimating a digital signal processor resource requirement for the multipoint conference. The rejection of each of these claims depends on the Office Action's mischaracterization of *Savage-Lipstream* as discussed above with regard to Claims 1 and 26. Neither *Rottoo-General-DataComm*, *Shaffer-Siemens*, *Kujoory-Lucent*, nor *Li-Nortel* cures this deficiency. Accordingly, Claims 12, 26-28, 33-35 and 40-42 are patentably distinguishable from the combinations cited by the Office Action for at least the same reasons discussed above with regard to Claims 1 and 26.

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Claim 29 is directed to an apparatus for reserving network resources for a multipoint conference. The apparatus comprises a server operable to receive a request for a multipoint conference reservation and a list of participants. The server is further operable to: select a first multipoint control unit to host the multipoint conference; predict communication paths associated with a plurality of the participants; estimate corresponding bandwidth requirements associated with a plurality of the communication paths; select a first communication path of the plurality of communication paths; determine availability of the estimated bandwidth requirement associated with the first communication path at approximately a scheduled start time and for an estimated duration of the multipoint conference reservation; and select a second multipoint control unit to host the multipoint conference if the first communication path does not include the estimated bandwidth requirement at approximately the scheduled start time and for the estimated duration.

The Office Action contends that each of the limitations of claim 29 is disclosed by *Savage-Lipstream*, *Rottoo-General-DataComm*, *Kujoory Lucent* and *Shaffer-Siemens*. As stated above, the Office Action mischaracterizes *Savage-Lipstream* as disclosing predicting communication paths for a plurality of participants. Although, *Savage-Lipstream* mentions bandwidth, it does not disclose teach or suggest estimating corresponding bandwidth requirements associated with a plurality of communication paths, because *Savage-Lipstream* merely determines whether the requested conference is currently being facilitated on any of a plurality of media servers. *See Savage-Lipstream* (¶ 20). Also, *Savage-Lipstream* may disclose the usage of a plurality of media servers and a determination of whether any one of such servers is active, *see Savage-Lipstream* (¶ 40), but this does not disclose, teach, or suggest, a server operable to select a second multipoint control unit to host the multipoint conference if the first communication path does not include the estimated bandwidth requirement at approximately the scheduled start time and for the estimated duration.

Claims 15-16 and 21-25 depend, either directly or indirectly, from Claim 13 and incorporate all of the limitations thereof. Claims 30-32 depend from claim 29 and

incorporates all the limitations thereof. Independent Claims 36 and 43 and their respective dependent Claims 37-39, and 44-45 each include limitations generally directed to predicting communication paths for a plurality of participants, estimating corresponding bandwidth requirements for a plurality of communication paths, and selecting a second multipoint control unit to host the multipoint conference if the first communication path does not include the estimated bandwidth requirement at approximately the scheduled start time and for the estimated duration. The rejection of each of these claims depends on the Office Action's mischaracterization of *Savage-Lipstream* as discussed above with regard to Claims 1, 13 and 29. Neither *Rottoo-General-DataComm*, *Shaffer-Siemens*, *Kujoory-Lucent*, *Li-Nortel*, nor the Official Notice taken by the Examiner cures this deficiency. Moreover, Applicants respectfully traverse the Official Notice taken by the Examiner and disagree with the Office Action regarding the alleged notoriety of the elements to which the Office Action refers in rejecting Claims 15, 22-25, 32 and 39. Accordingly, Claims 15-16, 21-25, 29-32, 36-39 and 43-45 each are patentably distinguishable from the combinations cited by the Office Action for at least the same reasons discussed above with regard to Claim 1, 13 and 29.

In rejecting Claims 5, 15, 22-25, 32 and 39 the Office Action takes Official Notice of particular elements of those claims and asserts that such elements are well-known. Applicants respectfully traverse this Official Notice and disagree with the Office Action regarding the alleged notoriety of these elements. If the Examiner intends to continue to rely on these Official Notices in rejecting any claims, Applicants respectfully request the Examiner to cite a reference or provide a signed affidavit in support of Examiner's position in compliance with MPEP § 2144.03.
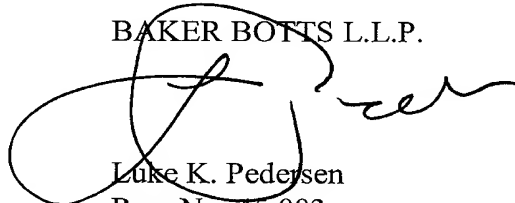
CONCLUSION

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other apparent reasons, Applicants respectfully request full allowance of all pending claims.

If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicants stands ready to conduct such a conference at the convenience of the Examiner.

Applicants believe no fee is due. However, should there be a fee discrepancy, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts, L.L.P.

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